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February 23, 2009

Catrice C. Williams, Secretary
Department of Telecommunications & Cable
Commonwealth of Massachusetts
Two South Station, 4th Floor
Boston, Massachusetts 02110

Re: Proposed Regional Service Quality Investigation

Dear Secretary Williams:

Enclosed for filing on behalf of Verizon New England, Inc., d/b/a Verizon Massachusetts are the Comments of Verizon New England Inc. in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", written in a cursive style.

Robert N. Werlin

Enclosure

cc: Geoffrey G. Why, General Counsel
Lindsay E. DeRoche, Hearing Officer

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Proposed Regional Service Quality Investigation

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COMMENTS OF VERIZON NEW ENGLAND INC.

INTRODUCTION

Verizon New England Inc. d/b/a Verizon Massachusetts (“Verizon MA” or the “Company”) annually invests hundreds of millions of dollars to maintain, expand and enhance its network in Massachusetts, making it one of the largest private investors in the Commonwealth. In addition to projects oft-noted in the media, such as expansion of Verizon MA’s FiOS service, Verizon MA devotes a large amount of its annual investment to maintaining and upgrading its existing telephone network in the state. In 2008, Verizon MA also completed a major upgrade of its network to bring its High Speed Internet (“HSI”) service to 24 western Massachusetts communities where broadband Internet access had never before been available, including the towns of Hancock, Middlefield and Rowe. As part of this project, Verizon MA also made its HSI service more widely available in the town of Shutesbury.

Partly as a result of Verizon MA’s massive, continuing investment in its network and facilities in Massachusetts, Verizon MA’s quality of service to its Massachusetts customers is very good. For years, Verizon MA has met and exceeded the overall service quality standard established by the Department of Telecommunications and Cable (“Department”) in Verizon MA’s statewide Service Quality Plan. In 2008, for example, Verizon MA exceeded the individual benchmark standards for eleven out of the twelve

service quality metrics in the plan throughout the year and obtained the highest possible score on at least eight of those metrics every month. Verizon MA particularly excels at getting customers into service in a timely fashion and keeping them in service.

In light of Verizon MA's investment in the state and high quality of customer service, there is no need for the Department "...to open a regional investigation...of basic service quality in Berkshire, Hampden, Hampshire and Franklin counties...",¹ as proposed in the Request for Comments issued on February 9, 2009. In seeking comments, the Department posed three specific questions:

(1) Is there a reasonable basis for the Department to conclude that there may be a significant or widespread problem with Verizon's service quality in western Massachusetts, so as to justify opening an regional service quality investigation covering Berkshire, Hampden, Hampshire and Franklin counties?; and (2) If there is sufficient evidence of a possible significant or widespread service quality problem in western Massachusetts, is a regional investigation the best approach for investigating the matter, and if not, what would be a better process for addressing the issues? [footnote omitted]; and (3) If the Department determines to open a regional Verizon service quality investigation, is it reasonable and appropriate for the Department to consolidate the existing town-specific investigations for the towns of Hancock and Rowe (D.T.C. 07-2 and D.T.C. 07-5) and the pending Shutesbury complaint into the new regional investigation?

The answer to each of these questions is "no." As described below, there is no reasonable basis, either from a public policy or statutory perspective, for opening a regional investigation of Verizon MA's service quality.

¹ The wire centers serving customers in the four named counties constitute the 413 area code, with only a few exceptions.

I. THE TOWN-SPECIFIC COMPLAINTS CITED BY THE DEPARTMENT DO NOT JUSTIFY AN INVESTIGATION OF SERVICE QUALITY IN THE ENTIRE 413 AREA CODE

The Department references four complaints from western Massachusetts towns as the basis for its proposal, but these complaints do not demonstrate “significant concern about Verizon’s service quality among telephone customers in many towns in Western Massachusetts,” as suggested by the Request for Comment, at 1, nor do they show “a widespread service quality problem in western Massachusetts,” *id.* at 3, which would require investigation.

The Middlefield investigation (D.T.C./D.T.E. 06-6) is the only one of these complaints on which the Department has issued findings, and that decision was based on an incomplete record. There was no evidentiary hearing in that case, no sworn testimony from Verizon MA and no cross examination of witnesses. Verizon MA did not file testimony or other evidence, and the Department did not seek or receive briefs from any party.² Moreover, Verizon MA’s comprehensive analysis of the service quality and status of infrastructure in Middlefield, performed at the direction of the Department, showed no significant infrastructure deficiencies in the Town and identified only minor physical disrepair conditions, which Verizon MA promptly fixed. *See* Verizon MA Service-Quality and Infrastructure Analysis, dated June 30, 2008, filed in D.T.C./D.T.E. 06-6. In any event, Verizon MA and the Town of Middlefield subsequently entered into a settlement agreement which explicitly acknowledged that Verizon MA had fulfilled its obligations to review and correct any infrastructure deficiencies. *See* Settlement

² Verizon MA’s motion for reconsideration and to reopen the record was denied by the Department on procedural grounds. *See* Verizon Massachusetts Motion for Reconsideration, Motion to Reopen the Record and Motion for Stay, dated May 20, 2008, and the Department order dated September 18, 2008.

Agreement at paragraph 1.1, approved by the Department on December 16, 2008. Therefore, any prior Department findings with respect to service quality in the past for Middlefield cannot serve as an evidentiary foundation for an investigation into the current level of service quality in the town, county, or region.

The letter filed by two individuals residing at the same address in Shutesbury provides no evidence whatsoever of any service problem beyond a possible problem with the single line serving that address. The Request for Comment, at 2, refers to this letter as a “formal complaint from a western Massachusetts town,” but it is neither a formal complaint nor was it filed by a town. (Nor was that letter forwarded to Verizon MA for resolution.) The letter does not even meet the minimal statutory standard in G.L. c. 159, § 24, for a municipality-level complaint, which requires at least twenty customers or the mayor or selectmen in a municipality to trigger the requirement for a “hearing upon complaint.”

The letter, dated September 25, 2008, discusses service quality and the lack of DSL service. It also references and attaches another letter, dated September 12, 2008, and addressed to Verizon MA from the same customers and other residents of West Pelham Road in Shutesbury. This earlier letter makes no mention of telephone service quality, but, rather, asks about the availability of DSL service, a retail broadband service over which the Department has no jurisdiction. *Mass Migration Investigation*, D.T.E. 02-28, at 11 (2002) (“Pursuant to *In the Matter of GTE Telephone Operating Cos.*; GTOC Tariff No. 1: GTOC Transmittal No. 1148, CC Docket No. 98-79, Memorandum Opinion and Order, FCC 98-292 (rel. October 30, 1998), the Federal Communications

Commission has preempted states from regulating retail DSL services”).³ Accordingly, the Shutesbury “complaint” about service-quality consists solely of the cover letter filed with the Department by two people living at the same address. At best, this letter should be referred to the Department’s Consumer Division for consideration. It certainly does not support a conclusion that there is a widespread service quality problem in western Massachusetts. An unproven allegation of substandard service quality to one house or even a portion of one street in one municipality cannot rationally justify an investigation of service quality over the entire area served by the 413 area code.

Nor can the Department make any conclusions about the need for a service quality investigation in western Massachusetts based on the two pending cases cited in the Request for Comment. The Hancock case⁴ and the Rowe case⁵ are still in their initial stages. In each case, the Department has held a public hearing in the municipality and conducted discovery. But Verizon MA and the towns have not yet conducted discovery, provided any sworn testimony or other evidence or submitted briefs, and the Department has not yet held an evidentiary hearing in either case. The Department

³ Although the Department is generally required by statute to open an investigation about the service in a municipality in response to a complaint signed by 20 customers (G.L. c. 159, § 24), that provision is not applicable to a service like retail DSL, which is preempted by federal law and over which the Department lacks jurisdiction. The Department addressed the lack of jurisdiction over complaints about such services as follows:

The Company’s obligation to provide services does not extend to providing service features, high-speed or advanced services; or any services beyond basic telephone service as regulated under the price cap plan. We reiterate our conclusion ...that we will not make determinations regarding the prudence of Verizon’s infrastructure investment decisions.

Town of Athol, D.T.E. 99-77 (2001), at 39.

⁴ *Petition of the Board of Selectmen of the Town of Hancock Pursuant to G. L. c. 159, § 24 Regarding the Quality of Verizon Telephone Service*, D.T.C. 07-2.

⁵ *Petition of the Town of Rowe Pursuant to G. L. c. 159, § 24 Regarding the Quality of Verizon Telephone Service*, D.T.C. 07-5.

cannot base its decision on the need for a larger investigation on the merits of the Hancock and Rowe complaints before hearing any evidence or issuing any findings in these ongoing proceedings.

The Department's authority to address issues regarding inadequate service are governed by the provisions of G.L. c. 159, § 16. As stated by the Department in *Town of Athol*, D.T.E. 99-77 (2001):

The Department's standard to determine the adequacy of the Company's service to its customers is set forth in G.L. c. 159, s. 16, which states in pertinent part:

If the [D]epartment is of the opinion, after a hearing ... that the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the [D]epartment shall determine the just, reasonable, safe, adequate, and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby

Before making such order, the [D]epartment shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of any other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith upon its financial ability to make such other changes, if any, as may be deemed by the [D]epartment of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public.

Thus, the Department must first determine whether the Company's practices, equipment, or service to the Towns do not meet the statutory requirement, and then consider the cost of any remedy and its impact on the Company's financial ability to provide service to the public. *See New England Telephone and Telegraph Company*, D.P.U. 89-300, at 289-90 (1990) ("NET"); *Mission Hill*, D.P.U. 96-30, at 2-3 (1997).

D.T.E. 99-77 at 6-7. In the Hancock and Rowe cases (and, of course, the complaint by the two residents of Shutesbury, which does not qualify as a municipal complaint under G.L. c. 159, § 24), the Department has barely begun the process required under G.L. c. 159, §16, and it would be improper to open a regional investigation based on unsubstantiated allegations brought in these isolated instances.

Indeed, even if the cited cases were properly considered as evidence, the towns involved in these cases represent only a very small fraction — less than one-half of one percent — of the total population of the western Massachusetts counties the Department would investigate, which include such relatively large communities as Springfield, Chicopee and Pittsfield as well as many very small municipalities similar to the ones that filed complaints. Accordingly, even if those complaints had been proven (which they have not), they provide no reasonable basis to make any conclusions about the quality of Verizon MA's service in the whole of western Massachusetts — much less that there may be a "significant or widespread problem" with that service.⁶

In sum, the individual cases cited by the Department provide no justification for embarking on a "regional investigation" of Verizon MA's service quality.

⁶ In addition to the actual complaints filed with the Department, the Request for Comment states, at 2, that the Department "has received indications from other western Massachusetts communities of their intent to file formal quality of service petitions" Of course, Verizon MA cannot address here the undescribed concerns of unidentified towns. And in any event, it would be inappropriate for the Department to launch a broad investigation of Verizon MA's service quality over a large region of the state on the strength of anticipated complaints that may never be filed, much less proven.

II. THE SERVICE QUALITY DATA SHOW NO SERVICE QUALITY “PROBLEM” IN WESTERN MASSACHUSETTS.

The Request for Comment mentions, at 2, that “Verizon’s monthly service quality index reports for the past year appear to indicate that trouble reports at the local level are higher in western Massachusetts than in other regions of the state. In fact, the data shows that during 2008, the rolling average of the monthly report rates for the 413 area code ranged between approximately 1.50 and 1.75 reports per hundred lines (“RPHL”). *See* Table 1, attached hereto. This level of report rate is significantly better than the 2.25 RPHL that serves as the target benchmark level under the Company’s Department-approved retail service-quality performance plan. *NYNEX*, D.P.U. 94-50, at 235-238 (1995). Performance that exceeds the target level established by the Department cannot be interpreted as being “unreasonable” or warrant a regional investigation.

That the RPHL rate may differ from one portion of the state to another is neither surprising nor a cause for concern or an investigation. There will be differences between rural and urban areas, between densely populated and sparsely populated regions and between areas served by different types of outside plant, and these differences may have nothing to do with the level of service quality provided by Verizon MA. There will also be deviations from month to month and when service is affected by particularly severe weather. This is especially so in a region like western Massachusetts, which is subject to more harmful storms than the eastern portion of the state. But where the service-quality data show that Verizon MA’s performance has met and exceeded the targeted performance level across the region over a significant period of time, there is no “regional problem” that bears investigation.

Accordingly, there is nothing in the RPHL data that would justify the conclusion that there is “... possible significant or widespread service quality problem in western Massachusetts...” or a need to investigate the service quality being offered by Verizon MA in western Massachusetts.

III. THE DEPARTMENT IS FULLY CAPABLE OF ADDRESSING LOCAL SERVICE QUALITY CONCERNS WITHOUT A CUMBERSOME REGIONAL INVESTIGATION.

The statutory process established for service-quality complaints (G.L. c. 159, § 24) and the Department-approved service-quality reporting mechanisms allow the Department to address service quality issues at two levels and are more than sufficient tools to enable full review and resolution of any service quality concerns that may arise.

Verizon MA’s monthly data reports filed in accordance with Department requirements properly focus on system-wide performance data and allow the Department to monitor the Company’s overall level of service quality as compared with the Department’s established benchmarks and targets for a variety of service metrics. D.P.U. 94-50, at 229-238. There can be no public policy justification for proceeding with an open-ended, large-scale investigation of service quality when Verizon MA’s service quality performance has consistently met Department-approved criteria.

In contrast, G.L. c. 159, § 24, provides the Department with the ability to review and address service concerns at a local level, as it is doing in the two municipal cases now before it. As the Company has pointed out in past municipal complaint cases, the averaging of data relating to reported performance metrics inevitably means that performance in some locations will be above the average and that performance in other locations will be below the average. With that in mind, individual cases such as the

Hancock and Rowe proceedings remain the most efficient way to address the often-unique circumstances giving rise to local service-quality complaints.⁷ It is true that historical service quality data is not always available on a town level, because Verizon MA's network is based on central offices that often serve multiple communities (which is why the Department's plan uses central office data), but that consideration supports review of service quality issues at a central office level, not at the broad, regional level proposed here.

A regional investigation will be cumbersome and will not serve as a substitute for case-by-case adjudications of local complaints. The pending Hancock and Rowe cases raise local issues that must be heard and resolved on their own merits.⁸ Accordingly, it would not be appropriate to consolidate those cases into a regional investigation, especially when the Department has not yet even reached any conclusions on the merits of those cases.

CONCLUSION

Verizon MA provides very high quality telephone service across Massachusetts. The few service-quality complaints the Department has received from communities in

⁷ Verizon MA notes that complaints filed by customers in communities in western Massachusetts often focus on the lack of availability of broadband, DSL, wireless or other high-speed services by Verizon MA and its competitors. *See e.g.*, the Shutesbury letters referenced above. Verizon MA has greatly expanded its DSL service availability in western Massachusetts over the past year, including in Shutesbury, and is now capable of providing that service to approximately 70 percent of the households in 24 towns that had previously lacked DSL service. Unfortunately, Verizon MA is not able to provide that service to all residents of those towns at this time.

⁸ The Shutesbury letters do not qualify for a separate proceeding under G.L. c. 159, § 24. As explained above, the service-quality complaint is from two residential customers, and the letter to Verizon MA addresses only DSL service, over which the Department lacks jurisdiction. If the Department is considering opening a proceeding under G.L. c. 159, § 24, in response to those letters, the Company would request the opportunity to file a formal response and motion to dismiss.

western Massachusetts over the past three years are unrelated to one another and were largely triggered by local, individual, perceived service issues and an understandable desire for advanced, high-speed data services. Moreover, the data show that the service quality offered to customers in western Massachusetts generally exceeds Department-established benchmarks. For these reasons, there is no reasonable basis for an investigation into Verizon MA's service quality in western Massachusetts.

Respectfully submitted,

VERIZON MASSACHUSETTS

By Its Attorneys,

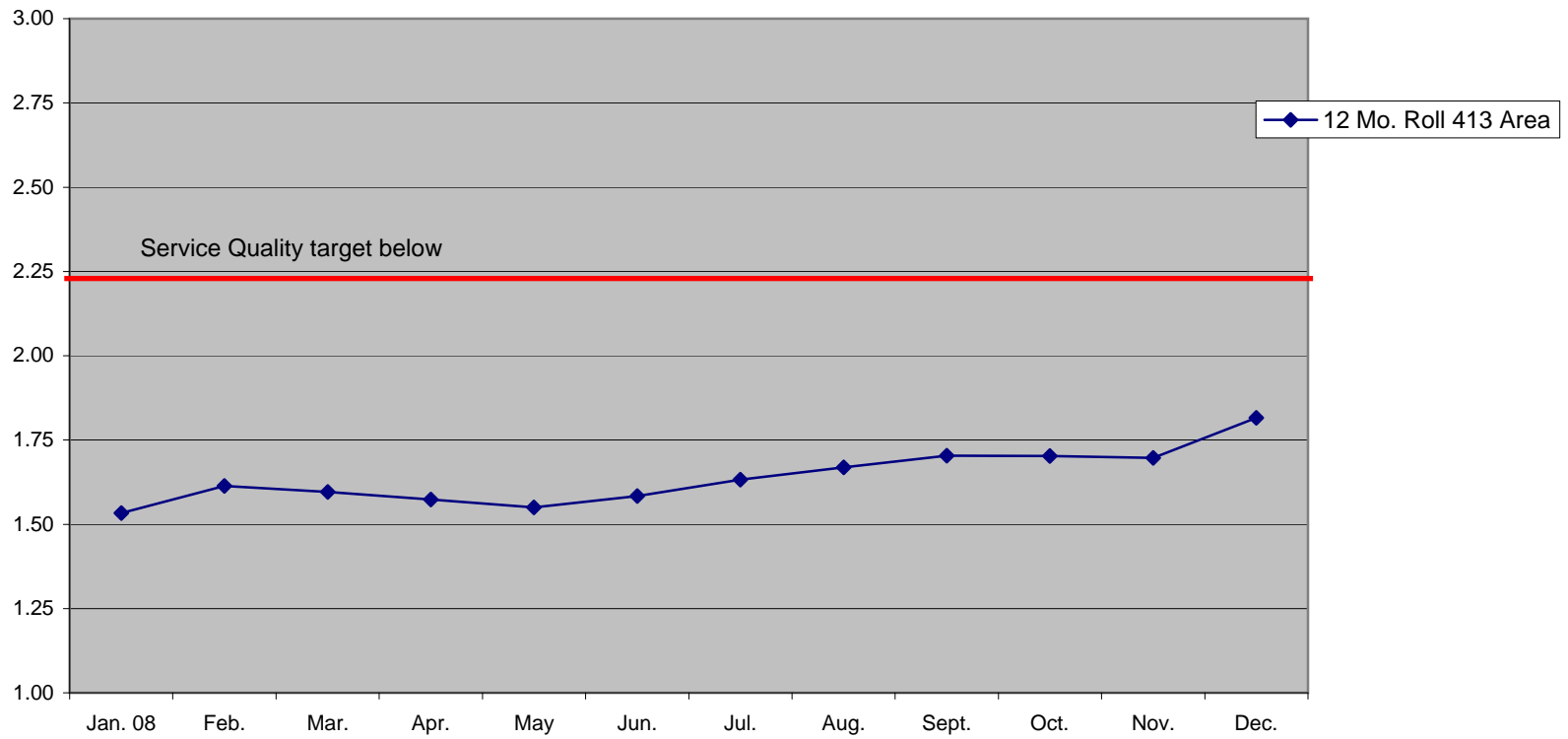
A handwritten signature in black ink, appearing to read "Robert N. Werlin". The signature is fluid and cursive, with the first name "Robert" and last name "Werlin" clearly distinguishable.

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Dated: February 23, 2009

Table 1
Verizon Massachusetts
Network Report Rate
12 Month Rolling Average 2008



*The 413 Report Rate is calculated using Dec. 2008 line count.